IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5897 of 2007()

CRIME NO.123/07 OF ARYANCODE POLICE STATION

PETITIONER/A1 TO A3

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1. ANIL KUMAR, S/O.SATYANANDAN, PADMA VILASOM, OTTASEKHARAMANGALAM, NEYYATTINKARA. (A1)

2. SANAL KUMAR, S/O.SATYANANDAN -DO- (A2)

3. K.LATHIKA, D/O.KAMALAMMA, KUNNANADU PADMAVILASOM, -DO- (A3).

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

THE S.I. OF POLICE, ARYANCODE POLICE STATION REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5897 of 2007

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Dated this the 1st day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations, inter alia, under Section 3(1)(x of the SC/ST (Prevention of Atrocities) Act. In view of the bar under Section 18 of the said Act, the learned counsel for the petitioners was requested to explain how anticipatory bail can be granted to the petitioners. The learned counsel only submits that the allegations are false. In the wake of Section 18 of the SC/ST Act, this court cannot obviously grant anticipatory bail to the petitioners, who face allegations under Section 3 of the said Act. Of course, I do agree that if the allegations do not constitute an offence under Section 3(1)(x) of the Act and the section has been included in the F.I.R. unnecessarily, the petitioners can certainly succeed in showing before court that though such section has been quoted, the said section does not come into play at all.

2. Allegations are raised that the caste name was used to call the defacto complainant, which, it is alleged, was to insult/intimidate the defacto complainant.

3. It is for the petitioners to appear before the learned Magistrate and seek regular bail. Such application for regular bail must be considered by the learned Magistrate on merits, in accordance with law and expeditiously. This Court has time and again clarified that the mere fact that the offence under SC/ST Act is triable by a Court of Sessions will not justify abdication of jurisdiction by the learned Magistrates under Section 437 Cr.P.C. The decisions in **Ali** v. **State of Kerala** (2000 (2) KLT 280), **Shanu** v. **State of Kerala** (2000 (3) KLT 452), **Krishnakumar** v. **State of Kerala** (2005 (1) KLD (Cri) 42) and **P.P. Kader** v. **State of Kerala** (2005 (1) KLD (Cri) 250) make the position very clear.

4. The petitioners' application for regular bail must be considered by the learned Magistrate expeditiously in the light of the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself in the light of the dicta in the decisions referred above.

(R. BASANT)
Judge

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